IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

XAVIER BECERRA, Attorney General of the State of California; DEPARTMENT OF JUSTICE,

Petitioners,

v.

SUPERIOR COURT OF CALIFORNIA FOR THE COUNTY OF SAN FRANCISCO,

Respondent,

FIRST AMENDMENT COALITION AND KQED, INC.,

Real Parties in Interest.

Case No. _____

San Francisco County Superior Court, Case No. CPF-19-516545
Dept. 302, Hon. Richard B. Ulmer, Judge (415) 551-3846

PETITION FOR EXTRAORDINARY WRIT OF MANDATE; MEMORANDUM OF POINTS AND AUTHORITIES

IMMEDIATE STAY REQUESTED OF TRIAL COURT'S MAY 17, 2019 ORDER GRANTING PEREMPTORY WRIT

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO CIVIC CENTER COURTHOUSE

Case Name: *FIRST AMENDMENT COALITION v. XAVIER BECERRA, Attorney General of the State of California; Department of Justice*

Court of Appeal No.:

CERTIFICATE OF INTERESTED PARTIES OR ENTITIES OR PERSONS
(Cal. Rules of Court, Rule 8.208)

(Check One) **INITIAL CERTIFICATE** [X] **SUPPLEMENTAL CERTIFICATE** [ ]

Please check the applicable box:

[X] There are no interested entities or persons to list in this Certificate per California Rules of Court, rule 8.208(d).

[ ] Interested entities or persons are listed below:

Full Name of Interested Entity or Party	Party *Check One*	Non-Party *Check One*	Nature of Interest *(Explain)*
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	
	[ ]	[ ]	

The undersigned certifies that the above listed persons or entities (corporations, partnerships, firms or any other association, but not including government entities or their agencies), have either (i) an ownership interest of 10 percent or more in the party if an entity; or (ii) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

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(Date)

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OTHER AUTHORITIES

Pursuant to Government Code section 6259, subdivision (c), Attorney General Xavier Becerra and the Department of Justice (collectively, "the Department") respectfully submit this Petition for Writ of Extraordinary Mandate and Request for Immediate Stay of the trial court's May 17, 2019 order granting real-parties-in-interest's motion for a peremptory writ.

INTRODUCTION

The Legislature enacted Senate Bill 1421 to achieve the important goal of increasing transparency relating to peace officer misconduct, officer-involved shootings, and serious uses of force. (Sen. Bill No. 1421 (2017-2018 Reg. Sess.) § 1.) The Department is committed to building public trust between the people of California and law enforcement agencies by embracing transparency in policing. Thus the Department takes very seriously compliance with its new duties under SB 1421, as enacted in amended Penal Code section 832.7 (amended by Stats. 2018, ch. 988, § 2).

In its May 17, 2019 order, however, the trial court required the Department to disclose far more records than are contemplated by SB 1421. The trial court correctly determined that SB 1421's amendments to Penal Code section 832.7 require the disclosure of records and incidents predating January 1, 2019. The Department does not dispute that conclusion. And, in fact, the Department promptly disclosed requested records relating to peace officers the Department employs. (Exh. 20 at p. 376.) The trial court, however, misconstrued the scope of the Department's duties by concluding the Department must disclose not only records relating to its *own* employed officers, but also records regarding officers employed by other agencies, even though SB 1421 limits disclosure to records maintained by an employing agency. This petition seeks reversal of that portion of the May 17 order, which, if left uncorrected, will place extraordinary and unnecessary burdens on the Department.

As a threshold matter, the Department advises the Court that this petition is filed out of an abundance of caution to avoid a possible waiver of the right to seek appellate review of the trial court's order. Although the May 17 order did not expressly require the disclosure of any records, the real parties in interest—First Amendment Coalition and KQED—have taken the position that it triggered the time for filing a petition, and the trial court declined the Department's request to clarify the matter. Under Government Code section 6259, subdivision (c), the twenty-day period to file a petition seeking review of a superior court decision in a Public Records Act case is triggered by "an order of the court . . . directing disclosure by a public official." The Department believes that the May 17 order does not qualify as such an order—instead, the May 17 order granted the motion for a peremptory writ filed by real parties in interest, adopted some legal conclusions, and instructed the parties to meet and confer regarding an appropriate form of writ and other logistical maters. (Exh. 15 at pp. 254-256.) But in the absence of clarification by the trial court, and in light of real parties' assertion of the twenty-day deadline for filing a petition, the Department has brought this petition to preserve its right to seek appellate review of an important question of law. The Department requests that the Court determine at the outset whether this matter is properly before this Court or should await further rulings by the trial court below.

If this Court does reach the merits, the Department respectfully submits that the trial court erred in ruling that SB 1421 requires agencies to disclose records not only relating to their own officer employees, but also those regarding officers employed by other state and local agencies. The trial court erroneously relied on a dictionary definition of a single word—"maintain"—to interpret SB 1421's requirements to apply broadly, beyond an employing agency's records, while ignoring the express directives in the

broader legislative scheme that mandate a more limited interpretation. When viewed in the appropriate statutory context, it is plain that the Legislature intended SB 1421 to reach only records maintained by an officer's employing agency, not records that the agency might have relating to other agencies' employees.

Further supporting a more limited interpretation, the trial court's interpretation increases the risk of improper disclosures of sensitive and historically confidential information that might impact an ongoing investigation, destroy the anonymity of a confidential witness, or endanger or embarrass peace officers whose information must otherwise remain confidential under Penal Code section 832.7, subdivision (a) and the California Constitution. Penal Code section 832.7, as amended by SB 1421, contains express limits on disclosure that turn on whether there was a "sustained finding" of officer misconduct during a disciplinary process and also on the needs of ongoing investigations—information an employing agency would readily have, but a separate agency like the Department may not. The trial court's interpretation would also result in a duplication of efforts by public agencies.

The trial court's holding was in error and should be reversed. If the Court elects to hear this matter, the Department requests that this Court issue an extraordinary writ of mandate directing the superior court to vacate the portion of its ruling that grants real parties' request that the Department disclose records in its possession regarding other agencies' peace officers.

AN IMMEDIATE STAY IS REQUIRED

If this court concludes that this petition is not premature and the issues it presents are ripe for decision despite the absence of an explicit order to disclose records, the Department requests an immediate stay of the May 17 order. A stay is appropriate in Public Records Act cases where the petitioner demonstrates irreparable damage and probable success on the

merits. (Gov. Code, § 6259, subd. (c); *League of Cal. Cities v. Super. Ct.* (2015) 241 Cal.App.4th 976, 983 [staying superior court's order directing disclosure of privileged communications]; *County of Los Angeles v. Super. Ct. (Kusar)* (1993) 18 Cal.App.4th 588, 593 [stay appropriate while appellate court determined whether information was subject to disclosure]; cf. *Labor & Workforce Dev. Agency v. Super. Ct.* (2018) 19 Cal.App.5th 12, 17 [Court of Appeal granted stay of trial court proceedings and issued alternative writ in order to consider whether agency was required disclose certain confidential information in an index in response to Public Records Act request], rev. denied (Apr. 25, 2018).)

The likelihood of petitioners' success on the merits is established below in the petition and supporting brief. The irreparable harm is evident. If petitioners are forced to disclose records regarding other agencies' officers, then there is a significant risk of permanently disclosing records that this court may ultimately conclude must remain protected and confidential under applicable law. In addition, substantial public resources would be expended for the process of gathering, reviewing and redacting records petitioners are not required to disclose—unnecessarily duplicating an obligation that already exists for employing agencies that actually maintain the records at issue. An immediate stay therefore is appropriate to preserve the status quo while this petition is pending.

PETITION FOR EXTRAORDINARY WRIT OF MANDATE OR OTHER APPROPRIATE RELIEF

Petitioners Xavier Becerra, in his official capacity as California Attorney General, and the California Department of Justice allege as follows:

I. PETITIONERS, RESPONDENTS AND REAL PARTIES IN INTEREST

1. Petitioners Xavier Becerra, in his official capacity as Attorney General of the State of California, and the California Department of Justice are the defendants in the matter of *First Amendment Coalition v. Becerra*, San Francisco Superior Court Case No. CPF-19-516545, in which an order issued on May 17, 2019. The plaintiffs in that action, First Amendment Coalition and KQED, Inc., are named here as the real parties in interest. The respondent in this court is the Superior Court of the State of California for the County of San Francisco.

II. AUTHENTICITY OF EXHIBITS

2. The exhibits submitted in conjunction with this petition are true copies of original documents on file with respondent court and the original reporter's transcript of the hearing in respondent court. The exhibits are incorporated here by reference as though fully set forth in this petition. The exhibits are paginated consecutively, and page references in this petition are to the consecutive pagination.

III. TIMELINESS OF THE PETITION

3. The order challenged in this petition for writ of extraordinary mandate was issued May 17, 2019. The trial court granted the Department an extension of twenty days to file its petition, under Government Code section 6259, subdivision (c), up to and including July 1, 2019. (Exh. 19 at p. 369.) Thus, this petition—assuming for the sake of argument that the May 17, 2019 order is reviewable—is timely filed.

IV. FACTUAL AND PROCEDURAL HISTORY

4. SB 1421, which amended Penal Code section 832.7 to make certain peace and custodial officer records nonconfidential and provide for their disclosure to the public upon request, went into effect on January 1, 2019.

5. On January 4, 2019, the Department received a request from First Amendment Coalition for all records within the Department's possession that are subject to disclosure under the first three of the four record categories outlined in Penal Code section 832.7, subdivision (b). (Exh. 1 at pp. 26-28.) The request asked for records from 2016, 2017, and 2018. (*Ibid.*) On February 4, 2019, the Department received a request from the California News Coalition (headed by real party in interest KQED) for records responsive to the last three of the four record categories. (Exh. 1 at pp. 30-32.) The request asked for records from January 1, 2014 to December 31, 2018.[1]

6. The Department responded to each of the requests, declining to disclose records and explaining the bases for that decision. (Exh. 1 at pp. 37-38, 40-42.) First, the Department explained its position that it is only required to disclose records relating to its own peace officer employees. (*Ibid*.) Second, the Department acknowledged the longstanding privacy rights of peace officers and, recognizing the respect owed to the judicial process, noted litigation pending in several courts across the state concerning whether SB 1421 requires the disclosure of records relating to incidents before January 1, 2019. (*Ibid*.) Finally, the Department stated that some records are exempt under Government Code section 6254, subdivision (k), because they are subject to attorney-client privilege or some other form of privilege. (*Ibid.*)

[1] In the trial court briefing, the Department erroneously stated that the Public Records Act request from the California News Coalition was received on January 4, 2019, the same date as the First Amendment Coalition's request. (Exh. 8 at p. 128.) In fact, the California New Coalition's Request was received on February 4, 2019 and the Department responded on February 22, 2019 (Exh. 1 at pp. 16, 30, 40.)

7. On February 14, 2019, real party in interest First Amendment Coalition filed a verified petition for writ of mandate in the Superior Court for the County of San Francisco. (Exh. 1 at p. 7.) The petition was amended on March 5 to add KQED, Inc. as a plaintiff. (*Ibid*.) The real parties in interest then filed a motion for peremptory writ of mandate on April 9, which set a hearing on that motion for May 17, 2019. (Exh. 4 at p. 74.) That hearing took place as scheduled in Department 302. Following the hearing, the trial court entered an order stating that "the motion is granted and a peremptory writ of mandate shall issue." (Exh. 15 at p. 254.) The order continued as follows: "Counsel are to meet and confer regarding (1) a form of the writ of mandate, (2) logistics of the attorney general's compliance with the writ and (3) any additional court orders or decisions felt necessary." (*Id.* at p. 256.) The order did not require the immediate disclosure of any records. The order also set an additional hearing for 9:30 a.m. on June 21, 2019, and required that a joint written report be filed by June 14, 2019. (*Ibid*.)

8. On May 31, 2019, counsel for the parties met and conferred via telephone in compliance with the trial court's order. During that meeting, the Department learned that First Amendment Coalition and KQED intended to take the position that the May 17 order triggered the twenty-day period for the Department to file a petition for extraordinary writ under Government Code section 6259, subdivision (c)—despite the fact that the May 17 order did not require the Department to immediately disclose any records. (Exh. 15 at pp. 254-56.) The Department filed an ex parte application on June 6 to seek clarification of the trial court's order or, in the alternative, enlargement of the time to file its petition. (Exh. 17 at pp. 300-301.) The trial court declined to clarify its May 17 order, but granted the Department's request for an enlargement of time. (Exh. 19 at p. 369.)

Accordingly, the Department is filing this precautionary petition for extraordinary writ.

9. On June 21, 2019, the trial court held a supplemental hearing. The trial court did not issue any additional orders or a writ of mandate. Instead, the court ordered the parties to return to court on July 18, 2019, to work through additional issues relating to the Department's obligations and the logistics of compliance. (Exh. 21 at p. 461.) At this point, the Department still has not been ordered to disclose records.

V. THE DEPARTMENT'S NEED FOR AN EXTRAORDINARY WRIT

10. Government Code section 6259 makes a petition for extraordinary writ the exclusive procedure for obtaining appellate review of a superior court's decision directing the disclosure of records under the Public Records Act. The statute states that an order of a superior court "directing disclosure by a public official . . . shall be immediately reviewable by petition to the appellate court for the issuance of an extraordinary writ." (Gov. Code, § 6259, subd. (c).) Direct appeal is not available; "the Legislature eliminated direct appeals in PRA cases" to "expedite the process and thereby to make the appellate remedy more effective." (*Powers v. City of Richmond* (1995) 10 Cal.4th 85, 110, 112.) "[T]he exclusive purpose of the amendment was to speed appellate review" in Public Records Act cases. (*Times Mirror Co. v. Super. Ct.* (1991) 53 Cal.3d 1325, 1334.) "[W]hen writ review is the exclusive means of appellate review of a final order or judgment, an appellate court may not deny an apparently meritorious writ petition, timely presented in a formally and procedurally sufficient manner, merely because, for example, the petition presents no important issue of law." (*Powers*, *supra*, 10 Cal.4th at p. 114.)

11. In any event, this case does present important questions regarding the implementation of SB 1421's amendments to Penal Code

section 832.7. Absent an extraordinary writ, there is a significant risk of disclosing records that an employing agency would have a basis to withhold under Penal Code section 832.7. In addition, the Department seeks extraordinary writ relief to avoid unnecessarily expending substantial public resources searching for, reviewing, and redacting records it is not required to disclose under Penal Code section 832.7—records that already must be disclosed by the agencies that actually maintain the records.

VI. ISSUES PRESENTED

12. Whether the trial court's May 17 order triggered the deadline for filing this petition under Government Code section 6259, subdivision (c), such that this matter is properly before this Court, or if further rulings by the trial court are required before this petition may be heard.

13. Whether the Superior Court erred in holding that Penal Code section 832.7, as amended by SB 1421, requires the Department to disclose records obtained from or regarding other agencies' officers in response to the Public Records Act requests submitted to the Department by the real parties in interest.

14. Whether the Superior Court erred in concluding that the Department has not shown pursuant to Government Code section 6255 that the onerous burden of reviewing, redacting, and disclosing records regarding other agencies' officers—a burden that the trial court itself acknowledged would be substantial—outweighs the public interest in obtaining those records from the Department of Justice rather than an officer's employing agency.

PRAYER

WHEREFORE, if the Court determines that the May 17 order is ripe for review under Government Code Section 6259, Petitioners pray that this Court of Appeal:

1. Issue an extraordinary writ of mandate directing the Superior Court to vacate that portion of the May 17, 2019 order that requires the Department to disclose records obtained from or regarding other agencies' officers in response to the Public Records Act requests submitted to the Department by the real parties in interest;

2. Reverse the Superior Court's determination that the Department has not shown that the burden of reviewing, redacting, and disclosing other agencies' records outweighs the public interest in obtaining those records from the Department of Justice and not an officer's employing agency;

3. Award petitioners their costs pursuant to rule 8.490 of the California Rules of Court; and

4. Grant such other relief as may be just and proper.

Dated: July 1, 2019

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

I. BECAUSE THE TRIAL COURT'S MAY 17, 2019 ORDER DID NOT REQUIRE THE IMMEDIATE DISCLOSURE OF RECORDS, THIS PETITION SHOULD BE DEEMED PREMATURE

As a threshold matter, it is the Department's view that the May 17 order did not require the immediate disclosure of any records and thus did not trigger the deadline for the Department to seek this Court's review by filing a petition for extraordinary writ. Under Government Code section 6259, subdivision (c), "an order of the court . . . directing disclosure by a public official" triggers a twenty-day window (subject to extension) in which a party may file a petition for issuance of an extraordinary writ. However, "[t]he totality of the language in section 6259 makes clear that, for lack of an order to produce documents or confirming the withholding of documents, subdivision (c) does not yet apply to impose a deadline to seek appellate review." (*Labor & Workforce Dev. Agency v. Super. Ct.* (2018) 19 Cal.App.5th 12, 24.) Because the Court's May 17 order did not immediately require the Department to disclose records, but instead ordered further proceedings during which the scope of disclosures would be addressed, the deadline in section 6259 does not yet apply in this case.

Rather than directly ordering the Department to disclose records, the May 17 order granted a motion for a peremptory writ filed by real parties in interest, adopted certain legal conclusions, and ordered the parties "to meet and confer regarding (1) a form of the writ of mandate, (2) logistics of the attorney general's compliance with the writ and (3) any additional court order or decisions felt necessary." (Exh. 15 at p. 256). The order set an additional hearing for June 21, 2019, and directed the parties to file a joint written report by June 14. (*Ibid*.) Nothing on the face of the order directs the Department to disclose any records. All indications on the face of the May 17 order suggest that it is merely a preliminary order that does not

direct disclosures, and at most contemplates that such an order will issue on some future date.

In fact, the trial court specified at several points during the hearing on May 17, 2019, that its impending order would not require the immediate disclosure of any records—that would come later, following the parties' meet-and-confer efforts and additional court proceedings—and that the parties were to meet and confer as to the form of the writ. During the hearing, counsel for real parties in interest requested that the trial court "issue an order directing the Attorney General to release all documents in its possession other than those that it contends are exempt under the specific provisions of [] SB 1421." (Exh. 16 at p. 288.) The trial court declined to do so, stating instead "I'm inclined to leave it more general. I'm inclined to have you meet and confer and try to talk through some of these things." (Exh. 16 at p. 288-289.) The court later reiterated "I am going to leave it more general. I want you to be meeting and conferring, you seem like reasonable people, seems to me you ought to be able to work something out and we'll see you again on the 21st of June at 9:30." (Exh. 16 at p. 291.) And in response to a question from the Department's counsel about whether the disclosure of records would be ordered effective immediately and whether the court would consider staying such an order, the trial court answered "there's not a writ yet, so what are you staying?" (Exh. 16 at p. 289.)

The trial court also left unresolved several critical issues relating to the disclosure of records under amended Penal Code section 832.7, such as whether certain exemptions provided by the Public Records Act continue to apply. (*See infra* pp. 34-37.) Because the trial court has not ruled on these issues, this petition could result in piecemeal litigation over each of the questions the Department has raised regarding its obligations under SB 1421. Although the May 17 order specifically stated that the parties

should meet and confer regarding "any additional court orders or decisions felt necessary" and the Department raised several points in the joint report filed on June 14, the trial court has yet to address them. (Exh. 14 at pp. 391-399.) The trial court did not reach these issues at the hearing on June 21, 2019, instead ordering the parties to continue meeting and conferring and setting a further hearing on July 18. (Exh. 21 at p. 461.)

Based on the language of the May 17 order itself and the transcript of the hearing on real parties' motion, the Department understood that no order requiring the disclosure of documents had yet issued and that therefore, the twenty-day deadline to file a petition for an extraordinary writ had not been triggered. But during a meet-and-confer session on May 31, 2019, the Department learned that real parties in interest were taking the position that the May 17 order *did* trigger the twenty-day period and that any writ petition the Department wanted to file would be due June 11, 2019. (Exh. 18 at p. 318.) In order to protect its right to review, the Department sought clarification from the trial court via an ex parte application heard on June 6, 2019. (Exh. 17 at p. 299.) But the trial court declined to provide any clarification regarding its May 17 order, and instead granted the Department's alternative request for additional time to file its petition for an extraordinary writ. (Exh. 19 at p. 369.)

To preserve its right to appellate court review of the trial court's decision, the Department has filed the instant petition for an extraordinary writ. The Department presents a discrete issue—whether the trial court correctly found that the Department must disclose records of other agencies' employees—but invites the Court to determine as an initial matter whether this petition need be heard at this time or should be heard in response to a later, more specific order from the trial court directing disclosure of records.

II. RECORD-DISCLOSURE LAWS AND AMENDED PENAL CODE SECTION 832.7

In enacting the Public Records Act in 1968, the Legislature declared that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (Gov. Code, § 6250.) To promote this fundamental right, the Public Records Act provides that "every person has a right to inspect any public record" unless the record is subject to a specified exemption. (Gov. Code, § 6253, subd. (a).) "In other words, all public records are subject to disclosure unless the Legislature has expressly provided to the contrary." (*Williams v. Super. Ct.* (1993) 5 Cal.4th 337, 346.) "Mindful of the right of individuals to privacy" (Gov. Code, § 6250), as well as concerns for "safety, and efficient governmental operation" *(Am. Civil Liberties Union Found. v. Super. Ct.* (2017) 3 Cal.5th 1032, 1039 (*ACLU*)), the Legislature provided "numerous exceptions" to its broad policy of public disclosure (*Com. on Peace Officer Standards & Training v. Super. Ct.* (2007) 42 Cal.4th 278, 288, citing Gov. Code, §§ 6253, subds. (a) & (b), 6254).

In 1978, the Legislature expanded the exceptions to the Public Records Act's broad disclosure mandates by enacting Penal Code section 832.7, which created a statutory right to privacy for peace officers in their personnel records. Penal Code section 832.7 protected "personnel records of peace officers and custodial officers and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from those records . . . ." (Pen. Code, § 832.7, subd. (a).) Section 832.5, in turn, addresses agencies' duties and rights to investigate citizen complaints against their own personnel, and imposes on "[e]ach department or agency in this state that employs peace officers" or "custodial officers" a duty to retain records of "[c]omplaints and any reports or findings relating to these complaints" for at least five years. (Pen. Code, § 832.5, subds. (a) & (b).)

Under section 832.5, subdivision (b), those records "may be maintained either in the peace or custodial officer's general personnel file or in a separate file designated by the department or agency as provided by department or agency policy, in accordance with all applicable requirements of law."

In enacting SB 1421, the Legislature curtailed confidentiality for a limited subset of records otherwise designated as confidential under Penal Code section 832.7. The Legislature added subdivision (b) to operate as an exception to the umbrella privacy provisions of section 832.7, subdivision (a), which states that "[e]xcept as provided in subdivision (b), the personnel records of peace officers and custodial officers and records maintained by any state or local agency pursuant to Section 832.5, or information obtained from these records, are confidential . . . ."

Penal Code section 832.7, subdivision (b) then lists the records that are exceptions to subdivision (a)'s exception to the Public Records Act's disclosure mandates, stating that "[n]otwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law, [four categories of] peace officer or custodial officer personnel records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the California Public Records Act." (Pen. Code, § 832.7, subd. (b)(1).) The first two categories subject to disclosure are records "relating to the report, investigation, or findings of" (a) an "incident involving the discharge of a firearm at a person," or (b) an "incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury." (Pen. Code, § 832.7, subd. (b)(1)(A)(i) & (ii).) The other categories that are subject to disclosure are (a) records relating to "an incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged

in sexual assault involving a member of the public" (*id.* at subd. (b)(1)(B)(i)), and (b) records relating to "an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime" (*id*. at subd. (b)(1)(C)).

III. AMENDED PENAL CODE SECTION 832.7 DOES NOT REQUIRE THE DEPARTMENT TO RELEASE RECORDS REGARDING OFFICERS EMPLOYED BY OTHER AGENCIES

A. The Legislature Intended for Penal Code Section 832.7's Disclosure Provisions to Reach Only an Employing Agency's Records About Its Own Officers

The plain meaning of Penal Code section 832.7, as amended by SB 1421, is that three categories of documents remain confidential absent an exception under subdivision (b): (1) "personnel records of peace and custodial officers;" (2) "records maintained pursuant to Penal Code section 832.5" and (3) "information obtained from these records." (Pen. Code, § 832.7, subd. (a) ["Except as provided in subdivision (b), the personnel records of peace officers and custodial officers and records maintained by any state or local agency pursuant to Section 832.5 or information obtained from these records are confidential . . . ."].) Penal Code section 832.5, cited in this subdivision, refers to "complaints by members of the public against the personnel of these departments or agencies" and "any reports or findings relating to these complaints." (Pen. Code, §§ 832.7, subd. (a), 832.5 subd. (a)(1) & (b).)

Section 832.7, subdivision (b) then creates specific exceptions to the confidentiality of personnel records and records relating to complaints that must be kept confidential under subdivision (a). That section provides that "the following peace officer or custodial officer records and records maintained by any state or local agency shall not be confidential and shall be made available for public inspection pursuant to the Public Records

Act." (Pen. Code, § 832.7, subd. (b)(1)). It does not provide for the disclosure of "information obtained from these records," which remains confidential under subdivision (a).

The four categories enumerated in subdivision (b) describe the *subject matter* of the records subject to disclosure, in contrast to subdivision (a)'s instructions on what *types* of records must be disclosed and by whom. Unless a personnel or complaint record of the type described in subdivision (a) falls within one of the substantive categories in subdivision (b), subdivision (a) requires that it remain confidential. (Pen. Code, § 832.7, subd. (a).)

The statute itself demonstrates that government agencies are only required to disclose records regarding their own employees. Penal Code section 832.8 defines "personnel records" as "any file maintained under that individual's name by his or her employing agency." (Pen. Code, § 832.8, subd. (a).) And, as mentioned above, Penal Code section 832.5 specifically refers to complaints "against the personnel of these departments or agencies." (Pen. Code, § 832.5, subd. (a)(1).) Section 832.7 also provides that "a department or agency that employs peace officers may disseminate data regarding . . . complaints (sustained, not sustained, exonerated, or unfounded) made against its officers." (Pen. Code, § 832.7, subd. (d)). And that "an employing agency" "may release factual information concerning a disciplinary investigation if the officer who is the subject of the disciplinary investigation . . . publicly makes a statement he or she knows to be false concerning the investigation or the imposition of disciplinary action." (*Id.*, subd. (e).) Read as a whole and in the proper context, it is clear that Penal Code section 832.7 provides only for the disclosure of records *by an officer's employing agency*. It does not require a non-employing agency to disclose records obtained from another agency about that agency's employees. For example, the Department obtains

records in connection with its independent investigations of local law enforcement agencies' policing practices. Penal Code section 832.7 does not require the Department to disclose those records. A non-employing agency is also not required to disclose any records it created regarding other agencies' officers, such as memoranda created in the course of an independent investigation or abuse-of-discretion review.[2]

The trial court erred in relying on a dictionary definition of "maintain" without considering how that word is used within the statutory framework surrounding Penal Code section 832.7, subdivision (b). In its order, the trial court wrote, "Nothing in Penal Code § 832.7 suggests that only an employing agency can 'maintain' records—a restriction the California legislature could easily have imposed had it so intended. Rather, 'maintain' in this context means 'to continue in possession of' or 'care for'—what the attorney general is doing with these records." (Exh. 15 at p. 255, citing Black's Law Dictionary p. 1039 (9th ed. 2009) and *City of San Jose v. Super. Ct.* (2017) 2 Cal.5th 608, 622.) The Supreme Court, however, has explained that "[w]e do not examine [statutory] language in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment." (*City of San Jose v. Sup. Ct., supra*, 2 Cal.5th at p. 616.) Furthermore, "[a] statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole." (*People v. Medina* (2007) 41 Cal.4th 685, 696.) By not adhering to these interpretive principles, the superior court's order

[2] In any event, such memoranda are likely to be protected by attorney-client privilege and the attorney work product doctrine, which continue to apply in the SB 1421 context.

erroneously interpreted section 832.7, subdivision (b)(1) as requiring the disclosure of *records in the possession of any agency*, rather than personnel or complaint records maintained by a peace or custodial officer's employing agency.

Further confirmation of the narrower reach of section 832.7, subdivision (b) is found in the contrasting words chosen by the Legislature in the Public Records Act and Penal Code section 832.7. The Public Records Act defines "public records" as "any writing containing information relating to the conduct of the public's business *prepared, owned, used, or retained* by any state or local agency . . . ." (Gov. Code, § 6252, subd. (e) italics added.) Penal Code section 832.7, in contrast, governs "peace officer or custodial officer personnel records and records *maintained* by any state or local agency." (Pen. Code, §832.7, subd. (b).) italics added.) "In using two quite different terms" to refer to records that may be subject to disclosure under the same statutory scheme relating to peace officer records, "the Legislature presumably intended to refer to two distinct concepts." (*City of San Jose v. Super. Ct.* (1993) 5 Cal.4th 47, 55 [refusing to treat as synonymous the terms "discipline imposed" and "conclusions" of an officer investigating a citizen complaint when determining whether disclosure of peace officer records in response to a *Pitchess* motion would be required under Evidence Code section 1045]; see also *Briggs v. Eden Council for Hope & Opportunity* (1999) 19 Cal.4th 1106, 1117 ["Where different words or phrases are used in the same connection in different parts of a statute, it is presumed the Legislature intended a different meaning"].)

Read in context, it is clear that "records maintained by any state or local agency" in Penal Code section 832.7, subdivision (b)(1) refers to the clearly delineated universe of records defined in subdivision (a), which are records maintained by an employing agency. To the extent that the

Department has independently obtained records regarding another agency's employees in the course of an independent investigation of that agency's practices, the Department cannot be said to "maintain" those documents for the purposes of Penal Code section 832.7, subdivision (b). And the records obtained by the Department would remain subject to the exemptions under the California Public Records Act. Only the employing agency maintains those documents for the purpose of production under subdivision (b).

B. The Legislative History Also Demonstrates that Penal Code Section 832.7 Applies Only to Employing Agencies

As explained above, when read as a whole and in context, Penal Code section 832.7 plainly requires an officer's employing agency—but no other agency—to disclose records. But to the extent this Court holds that the language is ambiguous, it may resort to the legislative history. (*City of San Jose v. Sup. Ct.*, *supra*, 2 Cal.5th at p. 616-17.) The legislative history of SB 1421 demonstrates that the statute was only intended to require employing agencies to make the required disclosures. Penal Code section 832.7, subdivision (a) has existed since 1978. The legislative history of SB 1421 specifically explains that "[p]rior to 2006, California Penal Code Section 832.7 prevented public access to citizen complaints held by a police officer's 'employing agency.'" And the Supreme Court has explained the reasons for the original enactment of Penal Code section 832.7: "In 1978, the California Legislature codified the privileges and procedures surrounding what had come to be known as '*Pitchess* motions' . . . through the enactment of Penal Code sections 832.7 and 832.8 . . . ." (*People v. Mooc*, (2002) 26 Cal.4th 1216, 1219-20.) In doing so, "the Legislature balanced the accused's need for disclosure of relevant information with the law enforcement officer's legitimate expectation of privacy in his or her personnel records." (*Ibid*.)

In 2006, the Supreme Court held that section 832.7's confidentiality protections extended as well to "the record of a police officer's administrative disciplinary appeal from a sustained finding of misconduct" which "was confidential and could not be disclosed to the public." (Off. of Sen. Floor Analyses, analysis of Sen. Bill. No. 1421 (Reg. Sess. 2017-2018) Aug. 31, 2018; *Copley Press, Inc. v. Super. Ct.* (2006) 39 Cal.4th 1272.) As the Legislative history indicates, SB 1421 "loosens the protections afforded to specified peace officer records relating to use of force, sexual assault on a member of the public and pertaining to dishonesty in reporting, investigating, or prosecuting a crime. (Assem. Com. on Pub. Saf. on Sen. Bill 1421 (2017-2018 Reg. Sess.), p. 5.) SB 1421, then, must be read with reference to subdivision (a)'s original meaning, with SB 1421 creating a disclosable *subset* of the employing agency's records described in subdivision (a), not expanding the universe of records to which Penal Code section 832.7 applies.

C. Other Provisions in SB 1421 and Provisions in Other Laws Also Counsel Against the Trial Court's Interpretation

The exemptions from disclosure and provisions regarding redaction enumerated in amended Penal Code section 832.7 demonstrate that SB 1421 reaches only the officer's employing agency's records. The employing agency is in the best position to make determinations about which documents should be redacted or withheld, as dictated by SB 1421, in order to protect an agency's peace or custodial officers and their families or other people from articulable risks to their safety (Pen. Code, § 832.7, subd. (b)(5)(D)); to preserve the anonymity of complainants and witnesses (*id*., subd. (b)(5)(B)), or to protect against interference with ongoing criminal or administrative investigations or enforcement proceedings (*id*., subd. (b)(7)). An employing agency, which has the best access to

comprehensive personnel and other documents relating to its officer employees, is also best suited to determine in the first instance whether any records "relat[e] to an incident in which a sustained finding was made by any law enforcement agency or oversight agency" of sexual assault or dishonesty, essential to disclosure of any records under subdivisions (b)(1)(B) and (C). (See Pen. Code, § 832.7, subd (b)(1)(B), (C) [directing disclosure of records that "relat[e] to an incident in which a sustained finding was made by any law enforcement agency or oversight agency"].)

While Government Code section 6253, subdivision (c)(3) allows for an agency to consult with "another agency having substantial interest in the determination of the request," the trial court's reading of Penal Code section 832.7 as amended would require more than consultation to determine what records exist and whether they can be disclosed. It would require the Department—which did not create all or the vast majority of the records—to rely heavily on the officer's employing agency to determine whether records are subject to disclosure (for example, whether the employing agency made a "sustained finding"). The Department would also require assistance from the employing agency to determine what information must be redacted from the records to avoid affecting ongoing investigations or revealing the identity of an anonymous witness or complainant. This process of consultation would not increase transparency or improve access to records—it would simply require the Department to expend significant resources to review and redact the very same records being reviewed and redacted by an employing agency.

Interpreting amended Penal Code section 832.7, subdivision (b) to require the disclosure of records obtained independently by nonemploying agencies creates conflict with other laws too. Certain laws specifically prohibit the disclosure of information an agency obtained as part of an investigation. Government Code section 11180 provides that the head of

any state department or agency "may make investigations and prosecute actions concerning . . . [a]ll matters relating to the business activities and subjects under the jurisdiction of the department [and] [v]iolations of any law or rule or order of the department." In the course of such investigations, the department head (or an officer of the department with delegated authority) may "[p]romulgate interrogatories" or "[i]ssue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, any writing as defined by Section 250 of the Evidence Code, tangible things, and testimony pertinent or material to any inquiry, investigation, hearing, proceeding, or action conducted in any part of the state." (Gov. Code, § 11181.) But information obtained using these powers cannot be disclosed: "an officer shall not divulge any information or evidence acquired by the officer from the interrogatory answers or subpoenaed private books, documents, papers, or other items described in subdivision (e) of Section 11181. . . ." (Gov. Code, § 11183.) "An officer who divulges information or evidence in violation of [section 11183] is guilty of a misdemeanor and disqualified from acting in any official capacity in the department." (*Ibid*.)

The Department obtains information using the subpoena power authorized by Government Code section 11180.[3] (Exh. 20 at pp. 395-96.) Some of that information relates to peace or custodial officers employed by other agencies that are subject to independent review and investigation by the Department and falls into one of the four categories of Penal Code section 832.7, subdivision (b)(1). The trial court has not yet determined whether materials obtained under this subpoena power are subject to

[3] Some of the Department's independent investigations are described on the Attorney General's website at https://oag.ca.gov/21st-century-policing.

disclosure under Penal Code section 832.7. But the apparent conflict between the laws further demonstrates that Penal Code section 832.7 should be read to require disclosure only by an officer's employing agency.

"Repeals by implication are disfavored and are recognized only when potentially conflicting statutes cannot be harmonized." (*Nickelsberg v. Workers' Comp. Appeals Bd.* (1991) 54 Cal.3d 288, 298.) "[C]ourts are bound to maintain the integrity of both statutes if they may stand together." (*Warne v. Harkness* (1963) 60 Cal.2d 579, 588.) Penal Code section 832.7 and Government Code section 11180 may stand together—if the former is interpreted to require disclosure only by a peace or custodial officer's employing agency, not by other agencies that obtained the same documents using the interrogatory or subpoena power authorized in Government Code sections 11180 and 11181.

The public indisputably has a "significant interest in the conduct of its peace officers," particularly in cases of officer-involved shootings. (*Long Beach Police Officers Assn. v. City of Long Beach* (2014) 59 Cal.4th 59, 74.) Reading Penal Code section 832.7, subdivision (b) by its plain terms to require disclosure solely by employing agencies does not diminish the transparency or accountability goals embodied in SB 1421, since records regarding officer misconduct covered by Penal Code section 832.7, subdivision (b) are available from individual employing agencies. Although real parties in interest have raised the concern that some local law enforcement agencies may have destroyed records that are still within the possession of the Department (Exh. 10 at p. 161), such hypothetical scenarios are better handled on a case-by-case basis rather than by requiring duplicative disclosure by both the Department and the employing agency in every case.

IV. THE DEPARTMENT MAY WITHHOLD RECORDS PURSUANT TO PROVISIONS OF THE PUBLIC RECORDS ACT, INCLUDING GOVERNMENT CODE SECTION 6255

SB 1421 specifically states that required disclosures are to be made "pursuant to the California Public Records Act." (Pen. Code, § 832.7, subd. (b)(1).) That directive means that the Public Records Act provisions continue to govern disclosures made under Penal Code section 832.7, subdivision (b).

At the initial hearing on the motion for peremptory writ of mandate, the trial court reserved for future consideration several significant questions affecting the disclosure of records under SB 1421, including whether the exemptions provided in Government Code section 6254, subdivision (k) (which cover, among other things, the confidentiality of privileged material), and the balancing test provided in section 6255 remain available. (Exh. 18 at pp. 350-352 [trial court rejecting real parties' request that it issue an order mandating that redaction or disclosures be made "only [a]s allowed under SB 1421," and directing the parties to meet and confer on that and other issues].)

The trial court's May 17 order likewise declined to decide whether the balancing test provided in Government Code section 6255, subdivision (a) is still available when records subject to disclosure under Penal Code 832.7 are requested. (Exh. 15 at p. 256 ["Whether the test applies to Penal Code § 832.7 is debated."].)[4] And the trial court declined to consider the

[4] The May 17 order does not address at all whether other exemptions codified in the Public Records Act survive SB 1421's enactment. By way of example, materials subpoenaed under Government Code section 11180 (discussed above) would be exempt records under the Public Records Act. (See Gov. Code. § 6254, subd. (k) [exempting "[r]ecords the disclosure of which is exempted or prohibited pursuant to provisions of federal or state law, including, but not limited to, provisions of the Evidence Code relating

(continued…)

Department's supporting evidence, stating simply that the evidence was conclusory. (*Ibid.*)

A. The Balancing Test Provided in Government Code Section 6255 Continues to Apply After SB 1421's Enactment

Government Code section 6255 survives SB 1421's amendments to Penal Code section 832.7. Government Code section 6255, subdivision (a) of the Public Records Act states that an "agency shall justify withholding any records by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."

The "notwithstanding . . . any other law" language immediately following section 832.7, subdivision (b)(1)'s reference to Government Code section 6254, subdivision (f) should not be read to preclude the application of the *entire* Public Records Act. The Supreme Court has cautioned against relying too heavily on this exact phrase: "'The statutory

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(…continued)
to privilege"]; *CBS, Inc. v. Block* (1986) 42 Cal.3d 646, 656 [exemption under Public Records Act incorporates other access restrictions established by law].) Other longstanding confidentiality rules incorporated as exemptions into the Public Records Act include confidentiality for attorney-client communications (*Roberts v. City of Palmdale* (1993) 5 Cal.4th 363, 373) and attorney work product (*County of Los Angeles* v. *Super. Ct.* (2000) 82 Cal.App.4th 819, 833). The May 17 Order does not address those matters either.

Because the May 17 order does not address which other exemptions codified in the Public Records Act survive SB 1421's enactment, the Department does not request resolution of those matters by this writ. But the Department will continue to seek an order of the trial court resolving whether other exemptions, like Government Code section 6254, subdivision (k), continue to apply. The Department may also separately seek review of such matters by this Court.

phrase 'notwithstanding any other provision of law' has been called a 'term of art' . . . that declares the legislative intent to override all *contrary* law.'" (*Arias v. Super. Ct.* (2009) 46 Cal.4th 969, 983, quoting *Klajic v. Castaic Lake Water Agency* (2004) 121 Cal.App.4th 5, 13 (*Klajic*).) The Public Records Act exemptions are not directly contrary to the new disclosure provisions of Penal Code section 832.7—they complement and can be harmonized with them. Furthermore, because section 832.7, subdivision (b) specifically references a single provision of the Public Records Act, the Legislature cannot have intended to include the remainder of the act as "other law" that *also* may not apply to protect confidentiality following the passage of SB 1421. (Cf. Pen. Code, § 832.7, subd. (b)(1) [noting that disclosure is required "[n]otwithstanding subdivision (a), subdivision (f) of Section 6254 of the Government Code, or any other law"].) Rather, the express enumeration of *one* particular provision of the Public Records Act—Government Code section 6254, subdivision (f)—must be read as "express[ing] the legislative intent to 'carve out an exception'" limited to the enumerated code section. (*Klajic*, *supra*, 121 Cal.App.4th 5 at p.13.) And, as discussed, section 832.7, subdivision (b)(1) goes on to specify that disclosures should be made "pursuant to the Public Records Act," indicating that the Legislature intended to *preserve* the Public Records Act, not override it wholesale.

Accordingly, even after the enactment of SB 1421, Government Code section 6255, subdivision (a) continues to allow the Department and other agencies to invoke the balancing test laid out in *American Civil Liberties Union Foundation v. Deukmejian* (1982) 32 Cal.3d 440, 444 (*Deukmejian*): whether "the burden of segregating exempt and nonexempt information outweighs the benefits of disclosure." In fact, the Supreme Court has explained that "[t]o refuse to place such items on the section 6255 scales" could "impose upon a governmental agency a limitless obligation. Such a

result would not be in the public interest." (*Id.* at p. 453.) By requiring disclosure of other agencies' records, the trial court is imposing on the Department the type of unreasonable burden that *Deukmejian* counseled against. As the trial court noted, the real parties in interest have made "an omnibus sort of request" rather than seeking records relating to specific incidents or officers. (Exh. 16 at p. 291.)

B. The Balance of Interests Weighs Against Requiring Agencies to Disclose Records About Other Agencies' Employees

In support of its argument that the balance of interests weighed against requiring the Department to review and redact records regarding other agencies' officers, the Department offered the Declaration of Michael Newman, the Senior Assistant Attorney General of the Civil Rights Enforcement Section of the Department. That declaration described the volume of information that would need to be reviewed, redacted, and disclosed in connection with just two investigations conducted by just one section within the Department—a small sampling from which the trial court could understand the broader scope of the burden that would be imposed by real parties' requests if the court determined that Penal Code section 832.7 should be interpreted to require the disclosure of records regarding other agencies' officers.[5] One matter identified as including records potentially subject to disclosure includes approximately 109,000 records. (Exh. 9 at p. 143.) Another includes more than 26,000 records. (*Ibid.*) The declaration estimated that, assuming an optimistic rate of review of 30 records per hour, it would take more than 4,400 attorney hours to review

[5] Real parties in interest objected to the Newman Declaration (Exh. 13 at pp. 237-239), and the Department responded to the objections (Exh. 14 at pp. 244-250.) The trial court declined to rule on the objections, but also declined to give any weight to the substance of the declaration. (Exh. 16 at pp. 269, 271, 294.)

and redact just those two files. (*Ibid.*) The obstacle to providing more detailed or comprehensive information regarding the volume of materials to be reviewed and redacted or the time that will be required to do so is clear: the Department will have to review the vast majority of those materials to determine whether they are subject to disclosure under amended Penal Code section 832.7.

But the trial court declined even to consider the Department's supporting evidence, stating that, "[i]n any event, the attorney general's terse, conclusory and speculative declaration would not pass the test." (Exh. 15 at p. 256.) The trial court's cursory application of the balancing test found in Government Code section 6255, subdivision (a) gives the declaration submitted on behalf of the Department short shrift and contradicts the trial court's own statements on the record recognizing the onerous burden that the disclosure of these records would impose on the Department. The trial court acknowledged several times how onerous the process of reviewing, redacting and disclosing such a large volume of records would be to the Department. At the May 17 hearing, Judge Ulmer stated "I get your argument that this is going to be onerous . . . I'm not sure these folks over on the other side have grasped the reality just yet of how onerous it's going to be." (Exh. 16 at p. 292.) He also recognized that the real parties "have asked for a boatload of records" and that their request was "an omnibus sort of request." (Exh. 16 at pp. 352, 354.)

This was error. Duplication of efforts and coordination required between multiple agencies are factors that courts may consider under section 6255's balancing test, and the burden imposed here passes the test. In *Deukmejian*, the California Supreme Court engaged in just such a

balancing test.[6] *(Deukmejian*, *supra*, 32 Cal.3d at p. 444.) There, the petitioner had requested index cards compiled by a network of law enforcement agencies that listed persons suspected of being involved in organized crime. (*Id*. at p. 444.) The cards included information such as the identities of the family members and known associates of organized crime members, who may or may not have had any connection to organized crime. The Court determined that the burden of separating the exempt information from the non-exempt information outweighed the public interest in disclosure. In doing so, the Court considered that the records requested "do not indicate which material is confidential, might reveal a confidential source, or identify the subject of the report" and that "in many instances defendants would have to inquire from the law enforcement department supplying the information." (*Id.* at p. 453.) The Department would be in the same position here of having to inquire from an officer's employing agency whether there is material that must not be disclosed. And these inquiries would have to be made on a record-by-record basis within each file, not merely a case-by-case basis.

Despite the trial court's recognition of the burden that will be imposed on the Department, the court did not properly take into account the Supreme Court's instruction in *Deukmejian* that courts must "weigh the benefits and costs of disclosure in each particular case" and must not "ignore any expense and inconvenience involved in segregating non-exempt from exempt information." (*Deukmejian*, *supra*, 32 Cal.3d at pp. 452-453.) Although the trial court assumed without deciding that the balancing test under Government Code section 6255 still applies, the court

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[6] The factors courts consider include a "wide variety of considerations, including privacy; public safety; and the 'expense and inconvenience involved in segregating nonexempt from exempt information.'" (*ACLU*, *supra*, 3 Cal.5th at p. 1043, citations omitted.)

found that the Department had not met its burden in demonstrating that the onerous task of reviewing, redacting and producing records obtained from law enforcement agencies around the state outweighs the public interest in the Department disclosing them. (Exh. 15 at p. 256.)

Real parties in interest have argued that the Legislature's inclusion of specific instructions on what material may be redacted from records disclosed under Penal Code section 832.7 means that the section 6255 balancing test is no longer available to allow withholding of any records that fall within the scope of Penal Code section 832.7, subdivision (b)'s four categories. (Exh. 5 at pp. 84, 89-90; see also Pen. Code, § 832.7, subds. (b)(5)-(b)(8).) But those instructions only apply once an agency has determined that a record must be disclosed under section 832.7, subdivision (b) and under the Public Records Act. (See Pen. Code, § 832.7, subd. (b)(5) ["An agency shall redact a record *disclosed pursuant to this section*" in enumerated circumstances].) The balancing test under Government Code section 6255 is part of the analysis under the Public Records Act concerning whether a record is subject to disclosure in the first place. Only if the answer is "yes" does section 832.7's framework of exemptions regarding redaction and time-limited withholding apply.

The balance of interests in this case weighs against requiring the Department to disclose records relating to other agencies' peace and custodial officers. For this additional reason, the portion of the trial court's order that would require the eventual disclosure of records regarding other agencies' employees should be reversed.

CONCLUSION

For the foregoing reasons, the Department requests that the Court determine whether the trial court's May 17 order triggered the deadline for filing this petition such that this matter is properly before this Court, or if further rulings by the trial court are required before this petition may be

heard. Should this Court reach the merits of this petition, the Department's petition for an extraordinary writ should be granted.

Dated: July 1, 2019

Respectfully submitted,

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Certificate of Compliance

I certify that the attached Memorandum of Points and Authorities filed in support of the Petition for Extraordinary Writ of Mandate uses a 13 point Times New Roman font and contains 6,567 words. Together, the Petition and Memorandum of Points and Authorities contain 9,437 words.

Dated: July 1, 2019

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DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: **First Amendment Coalition v. Xavier Becerra, et al**
Case No.: **CPF-19516545**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On July 1, 2019, I electronically served the attached **PETITION FOR EXTRAORDINARY WRIT OF MANDATE; MEMORANDUM OF POINTS AND AUTHORITIES** by transmitting a true copy via this Court's TrueFiling system to the recipients listed on the attached service list. In addition, I electronically served the foregoing document by transmitting a true copy via electronic mail. Also on July 1, 2019, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 300 South Spring Street, Suite 1702, Los Angeles, CA 90013, to the recipient listed on the attached service list.

PLEASE SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on July 1, 2019, at Los Angeles, California.

Beth Capulong
Declarant


Signature

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